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No. 07-716

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SUPREME COURT, U.S.

In The
Supreme Court of the United States

WFMJ TELEVISION, INC.,
Petitioner,

v.

CATHERINE BOSLEY, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR THE PETITIONER

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Petitioner WFMJ's reply in support of petition for writ of certiorari

I. The questions presented have national and potentially permanent impact on the evolving power of federal district courts to compel civil parties to settle.

Respondent Bosley has offered nothing to diminish the importance of the questions presented here.

She does not deny, as no one can, the increasing pressure in federal district courts to settle civil cases. Nor does she dispute that the judicial zeal to settle cases presents special challenges in demarking bounds of federal judicial power.

She avoids tackling the question of whether a district court has the power to do what happened here. The court here purported to exercise ancillary jurisdiction to enforce an asserted state-law settlement contract between parties of the same state. It based its power to do that on a bare recital of "continuing jurisdiction" to resove settlment disputes, while *sua sponte* dismissing the underlying federal-question suit with prejudice.

And the court entered its recital of "continuing" jurisdiction to enforce settlement (*i.e.*, never ending) without first confirming that an enforceable settlement contract actually existed; without knowing any of its terms; and without ordering any of the parties to comply with it.

This case illustrates vividly how uncertainties about ancillary jurisdiction to enforce settlement -- and perhaps eagerness to have it – can spawn standardless discretionary judicial acts that strain the limits of Article III.

II. WFMJ's petition is accurate.

Before going further, the reader should reject Bosley's accusation that petitioner WFMJ has misrepresented the record.[1] Her sole support for that charge: "Petitioner stated to this Court that the Respondent unilaterally withdrew their Motion to Enforce the Settlement and that WFMJ did not 'oppose.'"[2]

Bosley does not directly quote WFMJ's petition or offer any page cites, which may explain why she is mistaken.

What the petition describes as "unopposed" or that "WFMJ didn't oppose" is Bosley's motion to vacate the dismissal and to set the case for trial on the merits of her copyright claims. Thus:

- Bosley "moved to vacate the dismissal, and moved to set the case for trial. WFMJ didn't oppose."[3]

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[1] Bosley Brf., 2.

[2] Bosley Brf., 2.

[3] Petition, 1.

- "Later that day, she moved to vacate the *sua sponte* dismissal order and to set the case for trial. WFMJ didn't oppose."[4]

- "WFMJ contends that when Bosley unconditionally withdrew her settlement motion on January 19, and moved unopposed to vacate the dismissal order and to go to trial, …."[5]

The petition is accurate.

III. The Court should resolve the important disagreement between the Seventh and Sixth circuit courts of appeals.

The recent Seventh Circuit opinions cited in WFMJ's petition say that, where there is no consent decree, a district court cannot exercise self-invoked "continuing" jurisdiction to enforce settlement after terminating federal jurisdiction by dismissing the underlying suit with prejudice.

That conclusion contradicts the order that the Sixth Circuit affirmed here, a ruling required by the Sixth Circuit's earlier decision in Re/Max Internat'l, Inc. v. Realty One, Inc., 271 F.3d 633 (6th Cir. 2001), cert. denied, 535 U.S. 987 (2002).

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[4] Petition, 11.

[5] Petition, 23.

In Re/Max, the Sixth Circuit upheld a dismissal order nearly verbatim identical to the one contested here – and issued by the same district judge.

Although one judge dissented in Re/Max, he opined that the district judge "easily" could have invoked post-dismissal power to enforce settlement by adding some language, which the order at issue here contains.[6]

Bosley insists that the author of the contrary Seventh Circuit opinions – Judge Posner – is just "one judge," but she ignores the unanimity of the panels that adopted the opinions that Judge Posner wrote.

Citing two opinions written by other Seventh Circuit judges, Bosley claims that the other judges agree with the Sixth Circuit.[7] Both of the opinions that Bosley cites – one in 1996 and one in 2000 – pre-dated Judge Posner's opinions of 2007, 2006, and 2002.[8]

Judge Kanne wrote the 1996 opinion and judges Evans and Bauer were on the panel of the opinion issued in 2000. Each sat on at least one of the later

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[6] Re/Max, 271 F.3d 633, 653 (Wallace, J., dissenting).

[7] Bosley Brf., 17-19.

[8] See next footnote for citations.

Bosley relies on *In re VMS Securities Litig. v. Prudential Securities, Inc.*, 103 F.3d 1317 (7th Cir. 1996) – mistakenly cited by Bosley as 172 F.3d 1372 – and *Montgomery v. Aetna Plywood, Inc.*, 231 F.3d 399 (7th Cir. 2000).

panels that unanimously adopted Judge Posner's opinions.[9]

Bosley dismisses two of those unanimous opinions as dicta – Lynch, Inc. v. SamataMason, Inc. and Shapo v. Engle.[10]

Both opinions emphasized that district courts cannot validly assume ancillary jurisdiction to enforce settlement merely by saying that they have it, while dismissing the underlying federal suit with prejudice. Those conclusions were not dicta.

In Lynch, the Seventh Circuit viewed that conclusion as vital to its own jurisdiction to hear the appeal.[11] After invalidating the retained jurisdiction to enforce settlement, the court decided that the matter was "appealable now because it wound up the proceedings in the district court even though Lynch may face further litigation with SamataMason in another forum over the settlement agreement."[12]

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[9] *Dupuy v. McEwen*, 495 F.3d 807, 809 (7th Cir. 2007) (Posner, Easterbrook, Evans); *Shapo v. Engle*, 463 F.3d 641, 643 (7th Cir. 2006) (Posner, Coffey, Ripple); *Lynch v. SamataMason, Inc.*, 279 F.3d 487, 489 (7th Cir. 2002) (Posner, Easterbrook, Bauer); *Jessup v. Luther*, 277 F.3d 926, 929 (7th Cir. 2002) (Posner, Easterbrook, Kanne).

[10] Bosley Brf, 17, 18. *Lynch*, 279 F.3d 487, 489 (7th Cir. 2002); *Shapo*, 463 F.3d 641, 643 (7th Cir. 2006).

[11] 279 F.3d 487, 490.

[12] *Lynch*, 279 F.3d at 490.

In Shapo, the Seventh Circuit remanded to clarify whether the district court's asserted power to enforce settlement came from an order dismissing the underlying suit with prejudice. That mattered because "we cannot exclude the possibility that the judge mistakenly thought she could retain jurisdiction even after dismissing the suit with prejudice."[13]

Yet uncertainty about federal jurisdiction does not arise only from holdings. It arises from dicta, too, with the Kokkonen dicta as a prime example.[14]

Although the difference between dicta and holdings is quite important in deciding which statements in appellate opinions bind courts in later cases, it does not negate dicta's pervading influence in producing uncertainty about what the law authorizes or requires.

Indeed, regardless of whether some lower court interpretations of Kokkonen's dicta are themselves dicta, the lower courts' opinions have caused disinterested and respected scholars to conclude that "many lower court judges disagree about what *Kokkonen* requires," resulting in "continuing uncertainties and confusion."[15]

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[13] 463 F.3d 641, 646.

[14] *Kokkonen v. Guardian Life. Ins. Co.*, 511 U.S. 375, 581-582 (1994).

[15] J. Resnik, *Procedure as Contract*, 80 Notre Dame L. Rev. 593, 635 (2005); J. Parness & M. Walker, *Enforcing Settlements in Federal Civil Actions*, 36 Indiana L. Rev. 33, 34 (2003).

IV. WFMJ raised its challenge to post-dismissal Kokkonen jurisdiction below.

Bosley insists that WFMJ did not question until now the district court's self-invoked jurisdiction under Kokkonen's dicta.[16] Again, Bosley is mistaken.

What actually happened was that WFMJ read Re/Max.

Although futile to assault the same order by the same judge already upheld in a recent published opinion by the same court of appeals, WFMJ still questioned the order's validity albeit less aggressively.

Mindful of Re/Max (and even a bit intimidated by it), WFMJ initially acknowledged in the court of appeals that the judge's order conferred the power that he had assumed.

But WFMJ protested that in a later appellate brief, and Bosley addressed the merits of WFMJ's protest in oral argument.[17]

Then, Bosley moved the court of appeals to award sanctions, arguing that WFMJ's legal arguments were frivolous. WFMJ then attacked the district court's Kokkonen jurisdiction again and more aggressively.[18]

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[16] *Kokkonen v Guardian Life Insur. Co.*, 511 U.S. 375, 381-382 (1994).

[17] Appdx to this brief, 4a–6a, 8a.

[18] Appdx to this brief, 10a-11a.

The Sixth Circuit denied Bosley's motion for sanctions, and added the unusual note of declining to award even ordinary court costs.[19]

This Court has not required petitioners to risk sanctions by mounting quixotic frontal assaults on recent and seemingly impenetrable circuit precedent as a condition for this Court's review, a condition that would impose an enormous gamble.[20]

That would seem to be especially true where, as here, the petitioner is challenging subject matter jurisdiction – which this Court can raise for the first time *sua sponte* and litigants can raise at any time.

V. Bosley did not refile her notice withdrawing the settlement motion as a "motion" to withdraw.

Bosley says that her notice withdrawing her motion to enforce settlement "was refiled as a motion

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[19] Appdx to this brief, 13a-15a.

[20] *See MedImmune, Inc. v. Genetech, Inc.*, 127 S.Ct. 764, 770 (2007) (not aggressively urging an argument that circuit precedent "precluded" did not suggest waiver, but instead reflected counsel's "sound assessment that the argument would be futile"); *United States v. Williams*, 504 U.S. 36, 43-45 (1992) (declining to require the government to "demand overruling of squarely applicable, recent circuit precedent" as condition for granting certiorari); *Standard Indus., Inc. v. Tigrett Indus., Inc.*, 397 U.S. 586, 587-588 (1970) (Black, J., dissenting) (the Court considers "whether assertion of the issue earlier would have been futile" in the court below).

to withdraw."[21] Using passive voice, Bosley does not say that *she* converted the notice into a motion. Indeed she did not, as the next section of this reply will show.

The Sixth Circuit, however, put the matter to rest by concluding: "there can be no doubt that the document filed with the district court expresses a unilateral desire on the part of the plaintiffs to withdraw their motion."[22]

And Bosley's appellate brief said that her motion to enforce settlement "had been withdrawn."[23]

Withdrawing her settlement motion does not affect attaining Kokkonen jurisdiction initially, but it does create the *endpoint* of that purported jurisdiction. The next section of this reply demonstrates that.

VI. The uncontroverted record shows that the district court's assumed jurisdiction to grant Bosley's motion to enforce settlement ended on January 19, 2006.

Bosley mistakenly portrays a hearing brief that WFMJ filed on January 30, 2006 – 11 days after she unconditionally withdrew her motion to enforce settlement – as reviving the district court's assumed Kokkonen jurisdiction.

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[21] Bosley Brf., 1st question.

[22] *Bosley v. WFMJ*, 2007 WL 2050655 at *2.

[23] Bosley appellee brf. at 27, in this reply at 2a.

It did not, and could not. By January 30, nothing could. The case was over, although no one realized it.

The uncontroverted record shows that three events converged 11 days earlier -- on January 19 – to immediately end whatever ancillary Kokkonen jurisdiction the district court could have had.

On that day, Bosley unconditionally withdrew her motion to enforce settlement; she moved for trial on the underlying copyright claims; and WFMJ already had advised the court that neither it nor Bosley could enforce any settlement because the parties had not consummated anything enforceable.[24]

When those developments combined on January 19, there was no pending complaint. There was no judicial command to enforce. There was nothing but a bare recital entered when the court dismissed the case, saying that it retained "continuing" jurisdiction to resolve disputes over settlement.

Thus, after January 19, the district court had nothing left to support the ancillary Kokkonen jurisdiction that it claimed to have. On January 19, 2006, Article III disabled any later attempt to revive federal jurisdiction to enforce an asserted state-law settlement contract between parties of the same state.

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[24] WFMJ memor. #334, 12/16/05; Petition, 54a-63a.

The uncontroverted record shows:

Nov. 26, 2005.

The district court ordered the case dismissed with prejudice and retained continuing jurisdiction over disputes in memorializing settlement, citing Kokkonen.

Dec. 15, 2005.

Bosley moved to enforce settlement.

Dec. 16, 2005.

WFMJ argued that the parties had not consummated a final, enforceable contract, and so opposed Bosley's motion to enforce.[25]

Jan. 19, 2006.

Bosley filed her notice that plaintiffs "hereby withdraw their Motion to Enforce Settlement Agreement Reached on November 23, 2005, which was filed on December 15, 2005" – doc. #346.[26]

Bosley moved separately to vacate the dismissal and to order a trial on the underlying copyright claims – doc. #347.[27]

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[25] WFMJ memor. #334.

[26] Petition, 54a-55a.

[27] Petition, 60a.

Loss of asserted ancillary *Kokkonen* jurisdiction:

> At this point – January 19 – Article III immediately deprived the district court of whatever ancillary Kokkonen jurisdiction it had. Bosley's motion to enforce settlement was no longer justiciable, if it ever had been.

Everything that happened after this point was *ultra vires*.

Here's what happened *after* January 19:

Jan. 20, 2006.

A district court employee designated as "(S, T)" modified the docket text of Bosley's notice withdrawing her settlement motion by adding: "FILED IN ERROR – ATTORNEY TO REFILE AS A MOTION."[28]

Later on Jan. 20.

Bosley refiled the identical "notice" that she had filed on Jan. 19. She did not recast it as a "motion" in any respect – doc. #348. Compare pages 54a and 57a in the appendix to WFMJ's petition.

It turns out that the district court, not Bosley, labeled the second notice as a "motion" on the court docket and not until several days later. Thus:

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[28] Petition, 51a; App. to this brief at 19a.

Jan. 23, 2006.

A district court employee designated as "(S,T)" modified the docket text of Bosley's second notice withdrawing her settlement motion by calling it: "Motion to Withdrawal Document Motion to Enforce Settlement Agreement Reached on November 23, 2005"[29]

The substance of a record trumps its docket description, however.[30] Bosley's second notice withdrawing her settlement motion was exactly that: another notice.

As the Sixth Circuit concluded: "there can be no doubt that the document filed with the district court expresses a unilateral desire on the part of the plaintiffs to withdraw their motion."[31]

Also on Jan. 23.

The court ordered an evidentiary hearing on Bosley's motion to enforce settlement. It set the hearing for eight days later, on January 30 – doc. #349.[32]

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[29] Petition, 51a.

[30] *E.g.*, *Hammond v. Verdini*, 377 F.Supp.2d 296, 297 n.1 (D. Mass. 2005).

[31] *Bosley v. WFMJ*, 2007 WL 2050655 at *2.

[32] Petition, 52a.

Jan. 30, 2006.

The magistrate judge conducted the evidentiary hearing on Bosley's motion to enforce settlement and WFMJ filed the hearing brief described earlier.

April 7, 2006.

The district court denied Bosley's "motion" to withdraw her motion to enforce settlement, and granted the motion to enforce settlement – doc. #397.

The district court did not explain how Bosley could have been advocating that the court should both grant the motion to enforce *and* allow her to withdraw it.

July 13, 2007.

The court of appeals affirmed the district court's orders.

VII. The Sixth Circuit's Article III mootness ruling and the Federal Circuit's contrary ruling in Earth Island Institute v. Albright are irreconcilable.

Bosley has failed to find a way to reconcile the mootness analysis in Earth Island Institute v. Albright with the Sixth Circuit's ruling here.[33]

The differences that she cites are either immaterial or inaccurate. Bosley says that Earth Island did not

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[33] *Earth Island*, 147 F.3d 1352 (Fed. Cir. 1998).

"involve" ancillary jurisdiction.[34] Of course it did. The movant to enforce was asking the trial court to enforce a "final judgment" that commanded the defendant federal government to issue revised regulations.[35] That is quintessential ancillary jurisdiction.

Bosley then tries to reconcile the cases by saying that the trial court in Earth Island had not recited that it "retained" ancillary jurisdiction as the district court did here. While Bosley is technically correct that the Earth Island trial court did not expressly retain jurisdiction, it did not need to. It had entered a final judgment commanding the government to act. Enforcing that command does not require any special retention of ancillary jurisdiction; the ancillary jurisdiction is built-in.

Bosley argues that no Article III controversy existed in Earth Island when the plaintiffs there moved to enforce because the trial court already had issued a final judgment. Yet the same was true of Bosley's motion to enforce settlement here. When Bosley moved to enforce settlement, this case already had been dismissed with prejudice.

Bosley also argues, when the movant in Earth Island unconditionally withdrew its motion to enforce, the parties were no longer disputing and there was nothing for the court there to resolve. Here, she argues, the parties were still disputing the alleged

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[34] Bosley Brf., 15.

[35] *Earth Island*, 147 F.3d 1354.

settlement when she withdrew her motion to enforce it.[36]

Bosley is incorrect. When the plaintiffs in Earth Island withdrew their motion to enforce, they still insisted that the government had not complied with the trial court's order to issue new regulations. A dispute still existed there, just as it did here. But the dispute in Earth Island lost justiciability when the plaintiffs unconditionally withdrew their motion to enforce, as the court of appeals there ruled.

Indeed, the plaintiffs in Earth Island withdrew their motion to enforce to gather more evidence, not because their dispute over the regulations was over. In fact, after the court of appeals ruled, the Earth Island plaintiffs filed a new complaint against the government, continuing the dispute.[37]

Both circuits cannot be interpreting Article III's mootness doctrine correctly. This Court should resolve the issue, especially given the uncertainty of the reach of ancillary Kokkonen jurisdiction.

Correction: Page 12 of WFMJ's petition omitted the citation: Shapo v. Engle, 463 F.3d 641, 643 (7th Cir. 2006).

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[36] Bosley Brf., 15.

[37] *Earth Island v. Daley*, 48 F.Supp.2d 1064, 1065-1066 (1999).

Conclusion

For the foregoing reasons and those stated in the petition for a writ of certiorari, the Court should grant WFMJ's petition.

Respectfully submitted,

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APPENDIX

APPENDIX 1

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Consolidated Court of Appeals Nos. 06-3091, 06-3624, 06-3625, 06-3626, 06-3894, and 06-3895

[Filed January 17, 2007]

CATHERINE BOSLEY, *et al.*	)
Appellees-Plaintiffs,	)
	)
-v-	)
	)
21 WFMJ, *et al.*	)
Appellants-Defendants.	)
	)

On Appeal From United States District Court for the Northern District of Ohio, Eastern Division

FINAL BRIEF OF APPELLEES-PLAINTIFFS CATHERINE BOSLEY AND RICHARD BROWN

* * *

[p. 27]

* * *

. . . Defendants challenge whether the Magistrate or the district court had the authority to even consider Plaintiffs' Motion to Enforce Settlement after it had been withdrawn. Defendants waived their right to appeal all of these issues due to the untimely objections to the Report and Recommendations. *See* FED.R.CIV.P. 72.

* * *

[p. 35]

At no time, however, did Defendants even suggest that the district court lacked jurisdiction to enforce the settlement. At no time did Defendants question Plaintiffs' efforts to withdraw their Motion to Enforce Settlement or any of the subsequent proceedings resulting therefrom. On the contrary, Defendants remained silent as to this issue and proceeded in full force in an effort to avoid the settlement.

* * *

APPENDIX 2

IN THE THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Consolidated Court of Appeals Nos. 06-3091; 06-3624, 06-3625, 06-3626, 06-3894 and 06-3895

On Appeal From U.S. District Court, N.D. Ohio Case No. 04-02529

[Filed January 22, 2007]

CATHERINE BOSLEY, *et al.*	)
	)
Appellees-Plaintiffs,	)
	)
-v-	)
	)
21 WFMJ, *et al.*	)
	)
Appellants-Defendants.	)
	)

Reply Brief of Appellant-Defendant WFMJ Television, Inc.

* * *

[p. 6]

WFMJ's first argument on appeal is that the district court had no subject matter jurisdiction to grant the unconditionally withdrawn settlement motion.[7]

Bosley responds by arguing that the district court correctly resolved the merits of her former motion, virtually avoiding WFMJ's jurisdictional challenge.

* * *

[p. 19]

* * *

E. The district court's reservation of "continuing jurisdiction to resolve disputes" over settlement does not, and cannot, give the court jurisdiction to decide moot issues.

Although the district court here reserved "continuing jurisdiction" to "resolve disputes" over settlement, that did not release the court from the strictures of Article III.

In reserving jurisdiction, the district court cited *Kokkonen*, but *Kokkonen* did not decide the validity or limitations of retaining jurisdiction over settlement when dismissing the underlying merits with prejudice,

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[7] (WFMJ Brf. at 31-33.)

as the district court here did. The dismissal order in *Kokkonen* did not retain jurisdiction over settlement.

In dicta, the *Kokkonen* Court opined parenthetically that the district court could have enforced the settlement if its dismissal order had retained jurisdiction to do that. 511 U.S. at 381. It is that dicta upon which the district court here relied. Ironically, *Kokkonen* emphasized that courts are supposed to follow the "holdings" of Supreme Court cases "rather than their dicta." 511 U.S. at 379.

[p. 20]

Kokkonen's dicta contemplated that retaining jurisdiction over settlement would be valid "if the parties agree" to it. 511 U.S. at 381-382.

The dicta did not say that courts have unfettered power to impose settlement upon the parties *sua sponte*, regardless of whether the parties have a pending motion to resolve settlement issues.

Most importantly, *Kokkonen's* dicta did not, and could not, relax Article III's requirement of a live controversy framed by the parties as the irrevocable condition for exercising judicial power. To the contrary, *Kokkonen's* holding emphasized that enforcing settlement must have "its own basis for jurisdiction," which cannot "be expanded by judicial decree." 511 U.S. at 377, 378. *Kokkonen's* dicta, therefore, did not and could not authorize courts to resolve settlement disputes that are moot.

Indeed, WFMJ has found no case decided after *Kokkonen* where the court found jurisdiction to impose settlement in the absence of a pending motion to enforce, or after receiving notice that the movant was withdrawing or abandoning the settlement motion.

* * *

APPENDIX 3

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Court of Appeals No. 06-3091, consolidated with 06-3624, 06-3625, 06-3626, 06-3894, and 06-3895

CATHERINE BOSLEY,	)
	)
APPELLEES,	)
	)
VS.	)
	)
WFMJ TELEVISION, INC., ET AL.,	)
	)
APPELLANTS.	)
	)

TRANSCRIPT OF PROCEEDINGS BEFORE THE UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT,

JUNE 1, 2007.

Proceedings recorded by mechanical stenography, transcript produced by court reporter.

For the Appellees, Catherine Bosley and Richard Brown, Mr. Richard Haber: . . .

* * *

[p. 20]

* * *

The issue -- the parties clearly litigated the controversy of the settlement, and the Court had retained jurisdiction in its dismissal entry in dealing with issues over the memorialization of this settlement.

When the Defendants argue that the Court didn't have jurisdiction to do that under Kokkonen, the Kokkonen decision actually in dicta says the Court retained jurisdiction. It may have been acceptable, but we also believe that what would be necessary is the parties' acceptance of that jurisdiction.

* * *

APPENDIX 4

In The United States Court Of Appeals For The Sixth Circuit

Consolidated Case Nos. 06-3091, 06-3624, 06-3625, 06-3626, 06-3894, 06-3895

[Dated September 4, 2007]

CATHERINE BOSLEY, et al., Plaintiffs-Appellees,	)
vs.	)
WFMJ TELEVISION, INC., et al. Defendants-Appellants.	)

On Appeal From United States District Court, Northern District Of Ohio
Case No. 04-02529

Response Of All Appellants And Their Counsel To Appellees' Motion For Sanctions And Costs

* * *

[p. 13]

* * *

C. The district court's reservation of "continuing jurisdiction" can't negate the dictates of Article III.

When the district court dismissed this copyright case with prejudice, it recited that it "retains continuing jurisdiction to resolve disputes concerning the memorialization" of settlement.[49] As authority for the continuing jurisdiction, the order cited *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994).

In rejecting WFMJ's Article III argument, this Court did not say that it was relying on any "continuing jurisdiction" decided by *Kokkonen*, as indeed it could not.

[p. 14]

"Continuing jurisdiction" means "never-ending" jurisdiction, and the Supreme Court did not decide in *Kokkonen* that Article III authorizes district courts to take it upon themselves to invoke never-ending jurisdiction over potential settlement disputes – normally a province of state courts and state law -- in a nondiversity lawsuit.

The dismissal order contested in *Kokkonen* did not retain any jurisdiction over settlement. In dicta, the

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[49] (Order, #331. J.A. 781.)

Kokkonen Court opined parenthetically that the district court in that case could have enforced the settlement if it had retained jurisdiction to do that.[50] Ironically, *Kokkonen* emphasized that courts are supposed to follow the "holdings" of Supreme Court cases "rather than their dicta."[51]

But what matters most here is that *Kokkonen's* dicta did not say that a district court's reservation of jurisdiction to resolve settlement disputes relaxes the dictates of Article III.

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[50] *Kokkonen*, 511 U.S. at 381.

[51] *Kokkonen*, 511 U.S. at 379

APPENDIX 5

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case Nos. 06-3091/ 06-3624/ 06-3625/ 06-3894/ 06-3895/ 06-3626

[Filed November 9, 2007]

CATHERINE BOSLEY, also known as Catherine Balsley, et al.,	)
Plaintiffs -Appellees	)
v.	)
21 WFMJ, et al.,	)
Defendants	)
WFMJ TELEVISION, INC.; MICHELLE NICKS; JOHN URCHEK	)
Defendants -Appellants	)

BEFORE: GIBBONS and COOK, Circuit Judges; and CLELAND, District Judge.*

ORDER

Upon consideration of appellees' motion for sanctions and costs as well as their motion to supplement that motion,

It is **ORDERED** that the motion to supplement the motion for sanctions and costs is hereby **GRANTED**.

It is further **ORDERED** that the motion for sanctions and costs is **DENIED**.

ENTERED BY ORDER OF THE COURT
Leonard Green, Clerk

/s/ Leonard Green

Issued: November 09, 2007

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* The Honorable Robert H. Cleland, U.S. District Judge for the Eastern District of Michigan, sitting by designation.

APPENDIX 6

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 06-3091/ 06-3624/ 06-3625/ 06-3894/
06-3895/ 06-3626

[Filed November 28, 2007]

CATHERINE BOSLEY, also known as Catherine Balsley, et al.,	)
Plaintiffs -Appellees	)
v.	)
21 WFMJ, et al.,	)
Defendants	)
WFMJ TELEVISION, INC.; MICHELLE NICKS; JOHN URCHEK	)
Defendants -Appellants	)

MANDATE

Pursuant to the court's disposition that was filed 07/13/2007 the mandate for this case hereby issues today.

COSTS: NONE

Filing Fee.....$
Printing.....$

Total.....$

APPENDIX 7

In The United States Court Of Appeals
For The Sixth Circuit

Court Of Appeals Nos. 06-3091, 06-3624, 06-3625, 06-3626, 06-3894, and 06-3895

[Dated August 30, 2007]

CATHERINE BOSLEY, et al.,	)
	)
Plaintiffs-Appellees,	)
	)
vs.	)
	)
WFMJ TELEVISION, INC., et al.,	)
	)
Defendants-Appellants.	)
	)

Declaration Of David Marburger In Support Of Response Of All Appellants And Their Counsel To Appellees' Motion For Sanctions And Costs

I, David Marburger, declare that the following is true to the best of my knowledge:

1. I am familiar with the use of the United States District Court, Northern District of Ohio's Electronic Case Filing ("ECF") System.

2. All counsel in the above-captioned case, including myself, used ECF for filing documents in the case of *Bosley, et al. v. WFMJ Television, Inc., et al.*, Case No. 04-02529.

3. To electronically file a document with the court, an attorney must do the following:

a. log into ECF with a valid login and password;

b. select the type of document that the attorney wishes to file from a court-provided, drop-down menu of "Attorney Events";

c. the attorney may "modify docket text" by adding the attorney's own text after the "Attorney Event" to better describe the document;

d. enter the case number;

e. designate the party filing the document;

f. import the document and any attachments, which must all be in Adobe Acrobat ("PDF") format; and

g. submit the document by pressing the "Next" button.

4. After the attorney submits the document, the ECF system produces a "Notice of Electronic Filing."

5. The ECF system automatically sends the "Notice of Electronic Filing" to the all attorneys of record by e-mail.

6. The "Notice of Electronic Filing" contains various details describing the filing, including the docket text chosen by the attorney, the assigned docket number, the filing attorney, and the date and time of filing.

7. The filed document appears on the court's electronic docket almost immediately after filing.

8. The "Attorney Event" chosen by the filing attorney appears on the electronic docket in regular font.

9. If the attorney chooses to "modify docket text," any text added by the attorney appears on the electronic docket in italics font.

10. After filing, the court clerk may change the docket text. If the clerk does so, a notation appears on the docket entry. The notation identifies the date of the change, the initials of the clerk employee who made the change in parentheses, and a short description of the change.

11. At 5:45 pm on January 19, 2006, I received a "Notice of Electronic Filing" by e-mail. This notice said that the filed document was a "Notice *of Withdrawal of Motion to Enforce Settlement Agreement Reached on November 23, 2005* filed by all plaintiffs"; that the docket number assigned to that notice was

346; and that the filing attorney was Shannon Polk (Bosley's counsel).

12. The font of the word "Notice" shows that Shannon Polk chose "Notice" from the drop-down menu of "Attorney Events" and then typed in all of the text that appears in italics after the word "Notice."

13. Sometime on the following day, January 20th, Docket No. 346 was modified on the court's electronic docket to read:

01/19/2006	346	FILED IN ERROR - ATTORNEY TO REFILE AS A MOTION - Notice *of Withdrawal of Motion to Enforce Settlement Agreement Reached on November 23, 2005* filed by all plaintiffs. Related document(s)333. (Polk, Shannon) Modified text on 1/20/2006 (S, T). (Entered: 01/19/2006)

14. Based on my knowledge of the ECF system, a clerk employee designated as "(S, T)" modified the docket text by adding the following: "FILED IN ERROR – ATTORNEY TO REFILE AS A MOTION."

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 30, 2007.

/s/
David L. Marburger